

Montana State Legislature

2013 Session

Additional Documents include:

- * Business Report**
- * Roll Call- attendance**
- * Standing Committee Reports,**
- * Table Bills, Fiscal reports etc.**
- * Roll Call Votes**
- * Witness Statements**
- * Informational items**
- * Visitor Registrations**
- * Any other Documents;**
 - ~ Petitions if any?**
 - ~ Any and all material handed in after the meeting end.**

**The original is on file at the
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may be viewed there.**

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BUSINESS REPORT
MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION
SENATE FISH AND GAME COMMITTEE

Date: Thursday, February 14, 2013
Place: Capitol

Time: 3:00 PM
Room: 422


BILLS and RESOLUTIONS HEARD:

SB 285 - Revise hunter orange requirement - Sen. Scott Sales
SB 286 - Revise laws related to wearing hunter orange - Sen. Scott Sales
SB 256 - Making FWP liable for private property damages caused by wild buffalo/bison - Sen. Frederick (Eric) Moore

EXECUTIVE ACTION TAKEN:

SB 151 - Tabled
SB 200 - DPAA
SB 250 - DPAA
SB 249 - DPAA

Comments:


SEN. John Brenden, Chair

MONTANA STATE SENATE
Roll Call
FISH AND GAME COMMITTEE

DATE: 2-14-13

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
SENATOR JOHN BRENDEN, CHAIRMAN	✓	
SENATOR RICK RIPLEY, VICE CHAIRMAN	✓	
SENATOR DEBBY BARRETT		EXCUSED
SENATOR TOM FACEY	✓	
SENATOR JENNIFER FIELDER	✓	
SENATOR BRAD HAMLETT	✓	
SENATOR LARRY JENT	✓	
SENATOR JIM PETERSON		EXCUSED
SENATOR FRED THOMAS	✓	
SENATOR KENDALL VAN DYK	✓	



SENATE STANDING COMMITTEE REPORT

February 14, 2013

Page 1 of 2

Mr. President:

We, your committee on **Fish and Game** recommend that **Senate Bill 200** (first reading copy -- white) **do pass as amended.**

Signed: _____

John P. Brenden
Senator John Brenden, Chair

And, that such amendments read:

1. Title, page 1, line 7.

Strike: "REQUIRING" through "SECTIONS;"

2. Title, page 1, line 10.

Strike: "87-1-623, 87-1-625,"

3. Title, page 1, line 11.

Strike: "REPEALING" through "87-5-132, MCA;"

4. Page 1, line 17.

Strike: "(3)"

Insert: "(2)"

5. Page 1, line 21 through line 23.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

6. Page 1, line 24.

Strike: "A"

Insert: "The commission shall adopt rules to allow a"

Strike: "may"

Insert: "to"

7. Page 1, line 25.

Following: "license"

Strike: "."

Committee Vote:

Yes 10, No 0

Fiscal Note Required ☐

SB0200001SC.swr

Insert: "when the wolf is a potential threat to human safety, livestock, or dogs. The rules must:

(a) be consistent with the Montana gray wolf conservation and management plan and the adaptive management principles of the commission and the department for the Montana gray wolf population;

(b) require a landowner or the landowner's agent who takes a wolf pursuant to this subsection (2) to promptly report the taking to the department and to preserve the carcass of the wolf;

(c) establish a quota each year for the total number of wolves that may be taken pursuant to this subsection (2); and

(d) allow the commission to issue a moratorium on the taking of wolves pursuant to this subsection (2) before a quota is reached if the commission determines that circumstances require a limitation of the total number of wolves taken.

(3) "

8. Page 1, line 26.

Strike: "subsection (8) "

Insert: "87-5-131(3)(b) "

9. Page 1, line 28 through page 2, line 20.

Strike: subsection (4) through subsection (8) in their entirety

Renumber: subsequent subsections

10. Page 2, line 22.

Following: "of"

Insert: "87-5-131, 87-5-132, and"

11. Page 2, line 24 through page 3, line 19.

Strike: sections 2 and 3 in their entirety

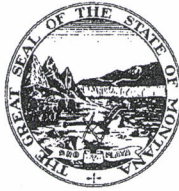
Renumber: subsequent sections

12. Page 6, line 16 through line 19.

Strike: section 9 in its entirety

Renumber: subsequent sections

- END -



SENATE STANDING COMMITTEE REPORT

February 14, 2013

Page 1 of 1

Mr. President:

We, your committee on **Fish and Game** recommend that **Senate Bill 250** (first reading copy -- white) **do pass as amended.**

Signed: _____

John O. Brenden
Senator John Brenden, Chair

And, that such amendments read:

1. Page 7, line 13.

Following: "~~and~~"

Insert: "and"

2. Page 7, line 15.

Strike: "; and"

Insert: "."

3. Page 7, line 16.

Strike: line 16

- END -

Committee Vote:

Yes 7, No 3

Fiscal Note Required ☐

SB0250001SC.swr



SENATE STANDING COMMITTEE REPORT

February 14, 2013

Page 1 of 1

Mr. President:

We, your committee on **Fish and Game** recommend that **Senate Bill 249** (first reading copy -- white) **do pass as amended.**

Signed: _____

John C. Brenden
Senator John Brenden, Chair

And, that such amendments read:

1. Page 2, line 8 through line 11.

Strike: "seek" on line 8 through "species" on line 11

Insert: "actively seek advice, information, and guidance from a county or tribal government in all matters that may have a harmful effect on agricultural production or livestock operations or that may pose a risk to human health or safety in that county or on those tribal lands"

- END -

Committee Vote:

Yes 10, No 0

Fiscal Note Required ☐

SB0249001SC.swr

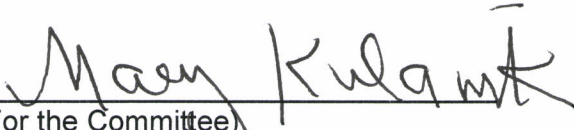
BILL TABLED NOTICE

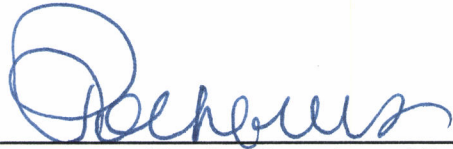
SENATE FISH AND GAME COMMITTEE

The **SENATE FISH AND GAME COMMITTEE** TABLED

SB 151 - Revise laws related to issuance of elk permits - Sen. Jim Peterson

, by motion, on **Thursday, February 14, 2013.**


(For the Committee)


(For the Secretary of the Senate)

11:10 / 2/15
(Time) (Date)

February 15, 2013 (10:57am)

Mary Kulawik, Secretary

Phone: 444-4889

MONTANA STATE SENATE
Roll Call Vote
FISH AND GAME COMMITTEE

DATE 2-14-13 BILL NO SB 151 MOTION NO. _____

MOTION: To Table SB 151

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR RICK RIPLEY, VICE CHAIR		✓	
SENATOR DEBBY BARRETT		✓	
SENATOR TOM FACEY	✓		
SENATOR JENNIFER FIELDER	✓		
SENATOR BRADLEY MAXON HAMLETT	✓		
SENATOR LARRY JENT	✓		X
SENATOR JIM PETERSON	✓		
SENATOR FRED THOMAS	✓		X
SENATOR KENDALL VAN DYK	✓		
SENATOR JOHN BRENDEN, CHAIR		✓	

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MONTANA STATE SENATE
Roll Call Vote
FISH AND GAME COMMITTEE

DATE 2-14-13 BILL NO SB 250 MOTION NO. _____

MOTION: DO PASS AS AMENDED

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR RICK RIPLEY, VICE CHAIR	✓		
SENATOR DEBBY BARRETT	✓		
SENATOR TOM FACEY		✓	
SENATOR JENNIFER FIELDER	✓		
SENATOR BRADLEY MAXON HAMLETT	✓		
SENATOR LARRY JENT		✓	
SENATOR JIM PETERSON	✓		
SENATOR FRED THOMAS	✓		X
SENATOR KENDALL VAN DYK		✓	
SENATOR JOHN BRENDEN, CHAIR	✓		

7-3

SENATE PROXY

I, Senator Larry Jent, hereby authorize Senator Kendall Van Dyk
to vote my proxy before the Senate Fish and Game meeting held on
2-14-13, 2013.

Senator Signature

Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

Fred
Thomas

Senator Signature

2/14/13

Date

- Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]

ambulant 5802001. ahs
ambulant 025001. ajs
ambulant 024901 ahs
ambulant 024901. ahs

MONTANA STATE SENATE
Visitors Register
SENATE FISH AND GAME COMMITTEE

Thursday, February 14, 2013

SB 285 - Revise hunter orange requirement

Sponsor: Sen. Scott Sales

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FISH AND GAME COMMITTEE

Thursday, February 14, 2013

SB 286 - Revise laws related to wearing hunter orange

Sponsor: **Sen. Scott Sales**

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE FISH AND GAME COMMITTEE

Thursday, February 14, 2013

SB 256 - Making FWP liable for private property damages caused by wild buffalo/bison

Sponsor: Sen. Frederick (Eric) Moore

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Justin Sakalis	MT Audubon		X	
Bob Faw	Myself	X		
Judy Faw	Self	X		
FRANK DePriest	Blaine County Comm			X
RICHARD DUNBAR	Phillips	X		
Ben Lamb	MWF		X	
Mike Ulesky	MT FWP		X	
Jim Steinbeissen	MSG A	X		
Nicole Rolf	MFBF	X		
Gary Macdonald	Roosevelt Co.	X		
Dustin Monroe	MNV		X	
Jonathan Proctor	Defenders of Wildlife		X	
Chelcie Cremer	MFBF	X		
Ariel Dresser	MT Stockgrowers/ MT Cattlewomen	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Additional
document



BUFFALO FIELD CAMPAIGN

P.O. BOX 957

WEST YELLOWSTONE, MONTANA 59758

(406) 646-0070 PHONE (406) 646-0071 FAX

<http://www.buffalofieldcampaign.org>

buffalo@wildrockies.org

February 14, 2013

Chairman John Brenden and members of the Senate Fish and Game
committee, Montana Senate
PO Box 200500
Helena, MT 59620-0500

Mr. Chairman and members of the Senate Fish & Game committee,

On behalf of Buffalo Field Campaign I am submitting testimony on SB
256. Mr. Chairman, I would also request that my testimony be shared
with committee members and entered into the hearing record. Thank
you.

Buffalo Field Campaign is a 501(c)(3) nonprofit organization whose
mission is to stop the slaughter of Yellowstone's wild buffalo herd,
protect the natural habitat of wild free-roaming buffalo and native
wildlife, and to work with people of all Nations to honor the sacredness
of the wild buffalo.

Buffalo Field Campaign is located in West Yellowstone, Gallatin County,
Montana, and is supported by volunteers and citizens in Montana and by
people from around the world who value America's native wildlife and
the ecosystems upon which they depend, and enjoy the natural wonders
of our irreplaceable public lands.

As an organization and on behalf of our members, Buffalo Field Campaign
is concerned and actively involved with protecting the last remaining
descendants of indigenous buffalo in North America to occupy their
original range, and securing long-term protection for viable populations
of wild buffalo and year-round habitat.

Buffalo Field Campaign is adamantly opposed to SB 256, for many reasons.

Please review our handout on Montana and U.S. Court Rulings on the Question of Liability for Acts of Wildlife.

SB 256 seeks to undo long-standing Montana Supreme Court precedent finding that wildlife species do not 'belong to any owner' by making the state liable for any private property damage or public safety hazard caused by buffalo reintroduced or transferred in Montana under MCA 87-1-216.

Why would the Montana legislature force the people of Montana to take on liability for any damages claimed to be caused by native wildlife species?

Why would the Legislature find that the people of Montana should be held liable in perpetuity for the behavior of our wildlife?

Why would SB 256 seek to impose state liability for buffalo?

Why would the legislature seek to increase the costs and legal wrangling of reintroducing buffalo into the state by subjecting the people of Montana to liability for any and all property damage and claim of public injury or harm.

The outcome sought by SB 256 is to turn the reintroduction of a native species long gone from Montana's landscape into a costly quagmire entangled in endless legal disputes rather than a welcome home.

Thus, SB 256 would impose in perpetuity on the people of Montana liability for all claims of private property and personal injury for any reintroduced buffalo.

Wildlife belongs not to the state or any one person or interest group; native species belong to future generations who are the beneficiaries of our wildlife heritage trust.

In *Rathbone v. Montana* (1960) the Montana Supreme Court found that a property owner in Montana "must recognize the fact that there may be some injury to property or inconvenience from wild game for which

there is no recourse."

This long-standing precedent was recently affirmed in Park County Stockgrowers Association v. Montana (2013) by Judge E. Wayne Phillips who wrote: "Montana's Constitution contains no provision safeguarding against threats to personal safety caused by naturally occurring conditions such as native wildlife. To the contrary, Montana's Constitution, laws, and regulations provide special considerations to assure that our wild places and the creatures that inhabit them are preserved for future generations."

A Fiscal Note for SB 256 has been requested to determine the costs to be paid by Montanans. These costs should not further burden Montana taxpayers with endless liabilities.

SB 256 is not amendable. Thank you for taking action to prevent the erosion of constitutional precedent protecting our natural wildlife heritage and advancing common sense by voting to defeat SB 256.

Daniel Brister, MS
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MONTANA AND U.S. COURT RULINGS ON THE QUESTION OF LIABILITY FOR ACTS OF WILDLIFE

Excerpted from Montana Judge E. Wayne Phillips ruling dismissing all ten claims brought against the state in Park County Stockgrowers v. Montana (2013).

BARRETT V. STATE NEW YORK (1917) "Wherever protection is accorded [to wild animals] harm may be done to the individual. Deer or moose may browse on his crops; mink or skunks kill his chickens; robins eat his cherries. In certain cases the Legislature may be mistaken in its belief that more good than harm is occasioned. But this is clearly a matter which is confided to its discretion. It exercises a governmental function for the benefit of the public at large, and no one can complain of the incidental injuries that may result."

SICKMAN ET AL. V. U.S. (U.S. 7TH CIRCUIT 1950) Claim for depredation, nuisance, and damages to crops by federally regulated migratory birds rejected.

RATHBONE V. MONTANA (1960) A property owner in the State of Montana "must recognize the fact that there may be some injury to property or inconvenience from wild game for which there is no recourse."

STATE V. SACKMAN (MONTANA 1968) Discretion to act in response to a report of an elk damaging property remains with Fish, Wildlife & Parks.

KASALA V. KALISPELL PEE WEE BASEBALL LEAGUE (MONTANA 1968) In considering the criteria of what should constitute interference with a property owner's peaceful enjoyment of property, courts have held "that it is the ordinary and reasonable person's complaint that should serve as a basis for what is a nuisance."

CHRISTY V. HODEL (U.S. 9TH CIRCUIT 1988) Montana sheep ranchers requested compensation for the killing of their sheep by grizzly bears because they were precluded from defending their sheep since the bears were protected by the Endangered Species Act. "The Federal Government does not 'own' the wild animals it protects, nor does the government control the conduct of such animals." "... the losses sustained by the plaintiffs are the incidental, and by no means inevitable, result of reasonable regulation in the public interest."

STATE V. HUEBNER (MONTANA 1992) "Montana's Constitution and law mandate special considerations to ensure that our wild places and the creatures that inhabit them are preserved for future generations."

STATE V. BOYER (MONTANA 2002) "Montana has also recognized in numerous decisions, the State's power to protect public wildlife resources through regulations designed for that purpose."

PARK COUNTY STOCKGROWERS ASSOCIATION V. MONTANA (2013) "Montana's Constitution contains no provision safeguarding against threats to personal safety caused by naturally occurring conditions such as native wildlife. To the contrary, Montana's Constitution, laws, and regulations provide special considerations to assure that our wild places and the creatures that inhabit them are preserved for future generations." (citing State v. Boyer 2002)

Compiled by Buffalo Field Campaign PO Box 957 West Yellowstone
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